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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,404	06/23/2003	Larry Randall Daudet	98356CONCONCON	7735

26285 7590 05/10/2005

KIRKPATRICK & LOCKHART NICHOLSON GRAHAM LLP  
535 SMITHFIELD STREET  
PITTSBURGH, PA 15222

EXAMINER
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GREEN, CHRISTY MARIE

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 05/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/601,404	<b>Applicant(s)</b> DAUDET ET AL.	
	<b>Examiner</b> Christy M Green	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2005.  
 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-10 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/2/05</u> | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This is a third office action for serial number 10/601404, entitled Joist Support Apparatus, filed on June 23, 2003. A Request for Continued Examination was filed on 3/29/05, and an action is as follows.

#### ***Response to Amendment***

In response to the examiner's office action dated December 21, 2004, the applicant has added claims 9 and 10.

#### ***Claim Objections***

Claim 10 is objected to because of the following informalities: It has been held that to be entitled to weight in structural claim, the recited method steps therein must not affect the structure in a manipulative sense, and if claiming a use of a particular structure the method steps should be within an separate independent claim as drawn to a method. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Chalmers et al., US patent # 4,288,958.

Chalmers discloses the claimed invention an apparatus comprising a joist rim (12) having a web (26) and first and second rim legs (24) extending substantially

Art Unit: 3635

perpendicularly from the web (figure 2), at least one opening (28) through the web (26), a joist attachment tab (14) integrally formed in the web (column 4, lines 64-65) adjacent each the opening (28 - figure 2), each of the attachment tabs extending from the web at an angle relative to the web (column 5, lines 39-49), and at least one reinforcing rib (32) corresponding to each of the tab (14) and provided in each of the web adjacent the corresponding tab (figure 2); the angle between each attachment tab and the web is substantially ninety degrees (shown in figure 2); each reinforcing rib (32) is parallel to the adjacent tab (14); the reinforcing ribs comprise indentations (at 32) that are embossed on a surface of the web (26); the web (26) has a plurality of fastener holes (28) therethrough; and, at least one of the openings (28) through the web (26) is formed by punching the web (column 5, lines 32-35), and bending (by being struck or punched out – column 5, lines 39-41 and lines 57-60) the punched joist attachment tab (14) such that it protrudes outward from the web at the angle (figure 2).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chalmers in view of Liss, US Patent # 5,956,916.

Chalmers discloses the claimed invention as stated above in claim 1, except for

Art Unit: 3635

the joist attachment tabs has a plurality of fastener holes. Liss teaches that it is known in the art to provide the joist attachment tab (6) with a plurality of fastener holes (13) therethrough. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the plurality of fastener holes in the attachment tab as taught by Liss with the attachment tab of Chalmers in order to provide a further securing means to attach a member to the tab by the use of screws (column 3, line 67 and column 4, lines 1-2).

Claim 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chalmers in view of Kostecky, US Patent # 3,845,601.

Chalmers discloses the claimed invention as stated above in claim 1, except for the first leg has a plurality of fastener holes therethrough. Kostecky teaches that it is known in the art to provide the first leg (4) has a plurality of fastener holes (12) therethrough. It would have been obvious for one having ordinary skill in the art at the time the invention was made to provide plurality of fastener holes in the first leg as taught by Kostecky first leg of Holmes in order to assure the apparatus will be in proper position if applied to the legs of the web "24" and will remain tightly locked to the panel or track (column 2, lines 65-67). Also, it would have been obvious to one having ordinary skill in the art at the time the invention was made to another reinforcing rib adjacent each opening since it has been held that rearranging parts of an invention involves only routine skill in the art.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chalmers.

Chalmers discloses the claimed invention as stated above in claim 1, except for

Art Unit: 3635

at least one other reinforcing rib adjacent each opening. Chalmers already teaches that it is known in the art to provide two reinforcing ribs (32) adjacent one opening. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide at least one other reinforcing rib adjacent each opening within Chalmers invention in order to provide further strengthen the locations where the ribs are positioned along the web adjacent the openings (column 5, lines 53-55). Also,

### ***Response to Arguments***

Applicant's arguments filed March 29, 2005 have been fully considered but they are not persuasive.

In response to the applicants argument that the PTO ruled claim 1, of patent # 6,761,005 which is a continuation of patent # 6,691,478 filed from serial # 10/145,471 in which this application is a continuation of and was previously allowed and found patentable over Chalmers, the examiner recognizes the argument, however this application although similar to the parent application, is not exactly the same, in which claim 1 of this application appears to be readable on the Chalmers reference as within the rejection above.

In response to the applicants argument that the term "joist" does not appear anywhere within the Chalmers reference, the examiner recognizes the argument, however, although the Chalmers reference does not have the word joist within the reference, does not mean that it is not interpreted to be readable on the invention of Chalmers. The term joist is defined within the Merriam's Webster's Collegiate Dictionary, tenth edition, page 631, as any of the small timbers or metal beams ranged

Art Unit: 3635

parallel from wall to wall in a structure. As shown in figures 3-5, the part interpreted to be a joist rim (12) is a metal beam (aluminum - column 4, lines 66-68) ranged parallel from wall to wall (11 – figures 1, 3-5) in a structure. Therefore, although Chalmers does not state the term joist within the reference, the portion (12) of Chalmers is considered to be interpreted as a joist rim by definition.

In response to applicant's argument that the use of a joist rim in the claims is not functional, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christy M Green whose telephone number is 571-272-6844. The examiner can normally be reached on M, T, TH 10:30-5:00.

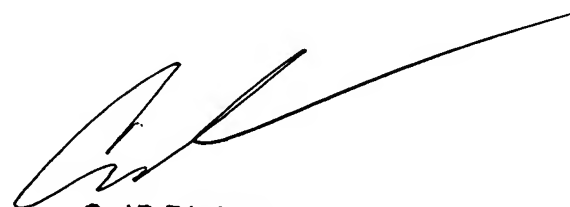
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3635

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Cg

May 1, 2005



**Carl D. Friedman**  
**Supervisory Patent Examiner**  
**Group 3600**